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18 *Fluidigm Corporation and Fluidigm Canada Inc.*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

FLUIDIGM CORPORATION, a Delaware  
corporation; and FLUIDIGM CANADA INC.,  
a foreign corporation,

Plaintiffs,

v.

IONPATH, INC., a Delaware corporation,

Defendant.

Case No. 3:19-cv-05639-WHA

**FLUIDIGM CORPORATION AND  
FLUIDIGM CANADA, INC.'S MOTION  
TO AMEND BRIEFING SCHEDULE ON  
THEIR MOTION TO MODIFY  
SCHEDULING ORDER AND FOR  
LEAVE TO FILE THIRD AMENDED  
COMPLAINT**

1 Pursuant to Civil Local Rule 6-3, Plaintiffs Fluidigm Corporation and Fluidigm Canada  
2 Inc. (collectively “Fluidigm”) respectfully submit this Motion to Amend Briefing Schedule (the  
3 “Motion”) as to Fluidigm’s Motion to Modify Scheduling Order and for Leave to File Third  
4 Amended Complaint (the “Underlying Motion”). This Motion is supported by the Declaration of  
5 K. Lee Marshall, attached hereto.

6 As detailed more fully in Plaintiffs’ Underlying Motion, Fluidigm seeks to amend its  
7 pleading to include breach of contract, unfair competition, and false advertising claims. Such  
8 amendment is necessary due to the discovery of material, new evidence first discovered by  
9 Fluidigm during its August 28, 2020 deposition of IONpath, Inc.’s (“IONpath”) employee Dr.  
10 Jason Ptacek.

11 That evidence establishes, *inter alia*, that IONpath breached the terms and conditions it  
12 agreed to as part of a contract with Fluidigm for reagents and antibodies it later used to provide  
13 services to third parties. The evidence also establishes that IONpath made material  
14 misrepresentations about its own, and Fluidigm’s, products.

15 After discovering the new evidence, Fluidigm moved promptly to seek leave to amend its  
16 complaint. IONpath opposes that proposed amendment.

17 Given upcoming deadlines related to the patent showdown process and discovery  
18 generally, good cause supports Fluidigm’s requested amended briefing schedule in order to  
19 prevent avoidable harm and complications if the Underlying Motion is not resolved promptly.

20 As discussed in the supporting Declaration of K. Lee Marshall, under the current  
21 scheduling orders (DEs 72 & 128), the parties’ opening showdown summary judgment briefs are  
22 due October 29, 2020 and non-expert discovery closes January 29, 2021. Although the  
23 showdown process is limited to certain issues, discovery continues to progress as to all claims  
24 during the showdown process. If Fluidigm’s Motion is not heard until October 15, 2020, and  
25 even assuming that an order follows promptly, Fluidigm will be forced to decide between (i)  
26 engaging in discovery, including deposing relevant witnesses such as IONpath’s Dr. Finn, in the  
27 intervening weeks in connection with its showdown claims – without knowing whether the  
28

1 additional claims of its Proposed Complaint are in the case, or (ii) waiting to engage in such  
2 discovery, and depose such witnesses, until after an order issues, particularly as witnesses may be  
3 deposed only once. Further, by waiting, Fluidigm risks missing out on the opportunity to include  
4 potentially valuable testimony in its showdown papers while also compressing additional non-  
5 showdown discovery.

6 Good cause exists to shorten time on the Motion. Fluidigm's operative complaint  
7 (including the specific claims it is asserting against IONpath) establishes the metes and bounds of  
8 this litigation. The Underlying Motion asks the Court to decide whether Fluidigm is permitted to  
9 file a Third Amended Complaint to include claims based on newly-discovered evidence  
10 previously in the sole custody and control of IONpath. Should the Court grant the Motion, the  
11 Court's ruling would give the parties guidance as to the scope of the theories that need to be  
12 addressed both during current discovery and in future, post-showdown proceedings. Whatever  
13 the Court's ruling on the Underlying Motion, securing that ruling promptly will enable the parties  
14 to focus their discovery efforts and showdown summary judgment papers on the theories that are  
15 currently in the case. A ruling from the Court on this threshold issue will allow the parties to be  
16 better able to investigate key issues and ultimately present the Court with a focused, well-  
17 developed record on which to resolve those issues.

18 Therefore, Fluidigm seeks the following expedited briefing schedule:

- 19
- 20 • Fluidigm Motion: September 8, 2020
  - 21 • IONpath Opposition: September 16, 2020 at 11:59 pm PDT
  - 22 • Fluidigm Reply: September 21, 2020 at 11:59 pm PDT
  - 23 • Hearing: At the Court's convenience

24 Expediting the briefing schedule as described will not alter the date of any other event or  
deadline already fixed by Court Order.

25 Fluidigm respectfully requests the Court grant its proposed briefing schedule for its  
26 Motion to Modify Scheduling Order and for Leave to File Third Amended Complaint.

1 Dated: September 8, 2020

2 Nick Williamson  
3 BRYAN CAVE LEIGHTON PAISNER LLP

4 By: /s/ Nick Williamson  
5 Nick Williamson

6 *Attorneys for Fluidigm Corporation  
and Fluidigm Canada Inc.*

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